IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1539 OF 2006
IN
FIRST APPEAL NO. 1646 OF 2006.

Jai Prakash Naik and others. ... Applicants.
Versus.
Ramesh Pandit and another. ... Respondents.

Ms.Harsha Y.Shah for the Applicants.

Shri C.G.Gawankar i/by Shri Sunil Singh for the Respondent No.1.

Shri J.J.Xabvier for the Respondent no.2.

CORAM : ABHAY S.OKA, J.

DATED : 28th July, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties.

2. Prayer (b) cannot be considered at this stage as it is a final relief which can be granted only at the final hearing of the Appeal. So far as prayer (a) is concerned, I find that no case is made out for grant of the said relief. By the impugned Judgment and order, the trial Court has passed the following order:

> "If it is so, then it will be proper that the regularisation proposal in respect of the suit structure which is shown in the impugned show cause notice dated 4/6/98 is decided first and if Ld.DMC comes to the conclusion that plaintiffs structure cannot

be regularised then he may call upon the Plaintiff again and conduct fresh inquiry and pass speaking order on merits within three months after passing order on regularisation proposal. If such order goes against the interest of the Plaintiff then the Plaintiff is at liberty to file fresh suit on the basis of the fresh order which will be passed by Ld.DMC. Meanwhile, Ld.DMC shall not take any action against the suit structure for six weeks after passing fresh final order. Present, the suit stands disposed off with above direction."

The only protection which can be granted to the Applicants at this stage is by directing the Deputy Municipal Commissioner/Assistant Municipal Commissioner to hear the present Applicants on the Application for regularisation made by the Plaintiffs.

3. Hence the Civil Application is disposed of by directing that in the hearing which may take place in terms of the direction given by the learned trial Court, the Deputy Municipal Commissioner/Asstt.Municipal Commissioner will give hearing to the Applicants.

Judge.